

1 Lisa McMahon-Myhran  
2 Robinson Tait, P.S.  
3 710 Second Avenue, Suite 710  
4 Seattle, WA 98104  
5 Phone: (206) 654-5529  
6 lmcmahon@robinsontait.com

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON  
AT PORTLAND

In Re:  
JESSICA P SAM and  
HA TO HA,  
Debtors

Case No.: 13-32107-elp7

RESPONSE TO MOTION FOR  
RECONSIDERATION

COMES NOW DEUTSCHE BANK NATIONAL TRUST COMPANY in its capacity as indenture trustee for the Noteholders of AAMES MORTGAGE INVESTMENT TRUST 2005-2, a Delaware statutory trust (“Deutsche Bank”), whose loan is serviced by Residential Credit Solutions, and responds to the Debtors’ Motion for Reconsideration for the Order of Relief from Automatic Stay. Deutsche Bank is a secured creditor who holds a note secured by a deed of trust on property located at 8230 SE Yamhill Street, Portland, OR 97216 (“the property”). Debtors allege that the property is their primary residence in their sworn schedules.

Debtors have filed a confusing motion. It appears to simply rehash Debtors’ prior arguments that Deutsche Bank is not the property party to assert a right to file a motion for relief from stay, and ultimately proceed to foreclosure on the property. Nothing in the Debtors’ Motion presents new evidence for the Court to consider.

Response to Motion for Reconsideration- 1 -  
60300-0230-BK-2\

Law Offices  
ROBINSON TAIT, P.S.  
710 Second Avenue, Suite 710  
Seattle, Washington 98104

1           Deutsche Bank filed a motion for relief from stay in the instant case on April 23, 2013. As  
 2 Judge Dunn properly noted at the hearing held May 14, 2013, the bankruptcy case at issue is at least  
 3 the third in the past year filed by these Debtors that affects the property. In each case, the Debtors  
 4 have raised similar issues, and each time have failed to convince the Court that Deutsche Bank does  
 5 not have standing to protect its interests in the property.

7           Generally, the hearing on a motion for relief from stay is a summary proceeding that requires  
 8 the bankruptcy court's action to be quick and is limited to determining whether "the creditor has a  
 9 colorable claim to the property of the estate." Biggs v. Stovin (In re Luz Int'l, Ltd.), 219 B.R. 837, 842  
 10 (9th Cir. BAP 1998).

12           In Debtor Ha To Ha's previous bankruptcy case 12-38965-rlld13, Debtor also claimed that  
 13 Deutsche Bank did not have standing to pursue its claims as noted by the Court at the May 14, 2013  
 14 hearing. Deutsche Bank brought the original promissory note to the hearing on confirmation of  
 15 Debtor's plan. Please see Exhibit 2 to Debtors' Motion pages 4-5. The subject Note is endorsed in  
 16 blank from Aames Funding Corporation, the original lender. This renders the instrument payable to  
 17 the bearer thereof. Given that Deutsche Bank is currently in possession of the Note, it is payable to  
 18 Deutsche Bank. As such, Deutsche Bank is the entity entitled to enforce the Note as its holder and  
 19 thus is the proper party to file the subject Proof of Claim. *See Veal v. Am. Home Mortg. Servicing,*  
 20 *Inc. (In re Veal), 450 B.R. 897, 555-56 (9th Cir. BAP 2011).*

24           The Debtors assert several arguments which involve failure to comply with the terms of the  
 25 Pooling and Servicing Agreement related to this Note and Deed of Trust. These arguments mainly  
 26 focus on an alleged failure to assign the loan into the Pooling and Servicing Agreement prior to the  
 27 Response to Motion for Reconsideration- 2 -  
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1 closing date of the trust. However, since the Debtors are not parties to the Pooling and Servicing  
 2 Agreement, they lack standing to assert violations of that agreement. *See In re Correia*, 452 B.R.  
 3 319, 324 (1<sup>st</sup> Cir. BAP 2011) (finding that bankruptcy debtors could not assert that an assignment was  
 4 invalid due to non-compliance with the relevant PSA given that they were not parties to that  
 5 agreement); *see also In re Smoak*, 461 B.R. 510, 519 (S.D. Ohio 2011); *Bittinger v. Wells Fargo*  
 6 *Bank NA*, 744 F. Supp. 2d 619, 625-26 (S.D. Tex. 2010). As such, the Debtors' arguments related to  
 7 the Pooling and Servicing Agreement are improper.  
 8

10 Deutsche Bank has standing to file the motion for relief from stay. Debtors have never  
 11 disputed that they are delinquent on their payments to Deutsche Bank, nor have they been able to  
 12 prove that Deutsche Bank does not have the requisite standing to proceed with a motion for relief  
 13 from the automatic stay, and ultimately to proceed with its state law remedies.  
 14

15 Wherefore, Deutsche Bank requests that the Court deny the Debtors' Motion for  
 16 Reconsideration.  
 17

18 DATED this 18th day of June, 2013.  
 19

20 /s/ Lisa McMahon-Myhran  
 21 Lisa McMahon-Myhran, 000849  
 22 ROBINSON TAIT, P.S.  
 23 Attorney for DEUTSCHE BANK NATIONAL TRUST  
 24 COMPANY in its capacity as indenture trustee  
 25 for the Noteholders of AAMES MORTGAGE  
 26 INVESTMENT TRUST 2005-2, a Delaware statutory  
 27 trust  
 28

Response to Motion for Reconsideration- 3 -  
 60300-0230-BK-2\

Law Offices  
 ROBINSON TAIT, P.S.  
 710 Second Avenue, Suite 710  
 Seattle, Washington 98104

1 The Honorable Elizabeth L. Perris  
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7 Lisa McMahon-Myhran  
8 Robinson Tait, P.S.  
9 710 Second Avenue, Suite 710  
10 Seattle WA 98104  
11 (206) 676-9640  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON  
AT PORTLAND

In Re: BANKRUPTCY NO. 13-32107-elp7  
JESSICA P SAM and CHAPTER NO. 7  
HA TO HA PROOF OF SERVICE  
Debtors.

Janin Hendry, under penalty of perjury under the laws of the United States,  
declares as follows:

1. That I am a citizen of the United States, over the age of 21 years, and  
competent to be a witness herein.

2. That on June 18, 2013, I transmitted electronically and/or by depositing in  
the United States mail, postage prepaid (as indicated herein), copies of the:  
RESPONSE TO MOTION FOR RECONSIDERATION

addressed as follows:

Jessica P Sam  
Ha To Ha  
8230 SE Yamhill St  
Portland, OR 97216

and to:

KENNETH S. EILER

Kenneth.eiler@psinet.com

PROOF OF SERVICE - 1  
60300-0230-BK-2\OR Proof of Service

Law Offices  
ROBINSON TAIT, P.S.  
710 Second Avenue, Suite 710  
Seattle WA 98104  
(206) 676-9640

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U.S. Trustee [USTPRegion18.PL.ELP@usdoj.gov](mailto:USTPRegion18.PL.ELP@usdoj.gov)

Dated June 18, 2013.

/s/ *Janin Hendry*

Janin Hendry